IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5663 of 2007()

CC.56/2007 of J.M.F.C., KATTAPPANA
CRIME NO.247/2005 OF KATTAPANA POLICE STATION

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: PETITIONER/ACCUSED

SHIHABUDHEEN, S/O.ABDUL SAMAD,
THENAMMAKKAL, KANJIRAPPALLY P.O.,
KANJIRAPPALLY.

BY ADV. SRI.TITUS MANI VETTOM
SRI.S.SURAJ (PALATHANATHU)

RESPONDENTS: COMPLAINANT & STATE

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE S.I. OF POLICE, KATTAPANA, IDUKKI
DT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5663 of 2007

Dated this the 19th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 420 I.P.C. Investigation is complete. Final report has already been filed. Consequent to non appearance of the petitioner, the learned Magistrate has issued non bailable warrant against the petitioner. The petitioner now finds the warrant issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His earlier absence was not wilful or deliberate. He is now willing to surrender before the learned Magistrate and apply for regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioner, in these circumstances, has come before this Court for issue of appropriate directions under Section 438 and/482 Cr.P.C in his favour.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-